Filed 3/3/09 In re A.A. CA2/7

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

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| In re A.A. et al.,<br><br>Persons Coming Under the Juvenile Court Law. | B209127<br><br>(Los Angeles County Super. Ct. No. CK73074) |
| LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>MARIA A.,<br><br>Defendant and Appellant. | |

APPEAL from an order of the Superior Court of Los Angeles County, Elizabeth Kim, Juvenile Court Referee. Affirmed.

Aida Aslanian, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

## INTRODUCTION

Defendant Maria A. appeals from an order of the juvenile court declaring her three children to be dependents of the court and removing them from her custody. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

Defendant Maria A. (Mother) is the mother of a 12-year-old daughter, A.A.; an 8-year-old son, E.S.; and a 5-year-old daughter, A.S. On May 21, 2008, the Department of Children and Family Services (DCFS) responded to a referral from a school counselor alleging that A.A. had been sexually abused by her 45-year-old maternal uncle, Juan A., and her 18-year-old maternal cousin, Oscar V. As part of a joint investigation by DCFS and Sheriff's deputies, a DCFS social worker interviewed A.A., Mother, and school personnel.

During her interview, A.A. reported that her maternal uncle and cousin had been sexually abusing her for about six months. The abusers lived in the home of A.A.'s maternal grandmother, and Mother and the children lived on the same property in a detached structure behind the home.

Oscar V. perpetrated most of the abuse. On numerous occasions, he fondled A.A.'s breasts and buttocks and induced her to masturbate him or touch him while he masturbated. He offered A.A. money and attempted to have intercourse with A.A., but she would not let him. The most recent incident occurred on December 24, 2007. On one occasion, Oscar V. gave A.A. a drug and she lost consciousness.

Juan A. molested A.A. on one occasion in January 2008. He grabbed her from behind, held her, fondled her breasts, and offered her money to get closer to him.

Although Mother had warned A.A. not to let her uncle do anything to her, A.A. did not tell Mother about any of the sexual abuse until about a month after the incident with her uncle. Mother explained that A.A. told her that she did not want Mother to report the abuse to police and she would kill herself if Mother reported it.

Mother told the maternal grandmother and a maternal aunt about the abuse. The grandmother told Mother to leave it alone and not say anything. The women agreed to honor A.A.'s wishes and not contact the police but to keep a "watchful eye" on the uncle and the cousin. They did not confront the uncle and cousin because they did not want to cause stress for the maternal grandfather, who was very ill. Mother explained that she could not ask the uncle to leave because he was paying rent, nor could she ask the cousin to leave because he had nowhere else to go and would refuse to leave. Mother also said she did not want to lose the trust of A.A. by reporting the abusers, but she encouraged A.A. to tell someone else such as her teacher or counselor at school.

A.A. feared the abuse would continue since she lived so close to her abusers. Her siblings later explained that they had not been sexually abused, did not know about the abuse of A.A., and there were times when Mother and grandmother were not at home and they were alone with the uncle and the cousin. Mother admitted that the children may have been left alone with the abusers after A.A. had reported the abuse to Mother.

About a month after she told Mother about the abuse, A.A. finally decided to tell her school counselor. On May 21, 2008, after hearing A.A.'s description of the abuse, the counselor told A.A. that she was required to report the abuse to police, and A.A. threatened suicide. The school called the Psychiatric (Response) Emergency Team to evaluate A.A., and the Team concluded she did not pose a threat to herself or others.

The same day, the counselor reported the matter to DCFS and a joint investigation was completed by a DCFS social worker and two Sheriff's deputies. As a result, the Sheriff's deputies arrested the uncle and the cousin for sexual abuse of A.A. DCFS removed the children from Mother's custody and placed them with their fathers, A.A. with her father, Leo R., and E.S. and A.S. with their father, Yimi S.

On May 27, 2008, DCFS filed a dependency petition and brought the case before the juvenile court for a detention hearing pursuant to Welfare and Institutions Code

section 300.[1] The petition alleged that A.A. had been repeatedly sexually abused by her maternal cousin, Oscar V., and Mother failed to protect her in that, after learning of the abuse, she allowed the cousin to continue to reside in the child's home and have unlimited access to A.A. It further alleged that A.A. had been sexually abused by her maternal uncle, Juan A., and Mother failed to protect her, in that, after learning of the abuse, she allowed the uncle to reside in the child's home and have unlimited access to A.A. The petition alleged that the sexual abuse of A.A. by the cousin and the uncle and Mother's failure to protect A.A. endangered A.A.'s physical and emotional health and safety and placed A.A., E.S. and A.S. at risk of physical and emotional harm, damage, danger, sexual abuse and failure to protect.

At the detention hearing, Mother's counsel represented that Mother had learned her lesson and moved off the property to a new residence. Counsel requested that the juvenile court release the children to Mother's custody or, alternatively, consider the possibility of a voluntary family maintenance plan under section 301 after a DCFS assessment of the new residence. Noting Mother's admission that, after she learned of the abuse, she may have left the children alone with the uncle and the cousin, the court ordered that the children remain in their fathers' custody, with Mother's visits to be monitored, giving DCFS discretion to liberalize the visitation.[2] The court ordered DCFS to conduct a pre-release investigation (PRI) to assess Mother's new residence.

In a June 3, 2008 PRI report, the DCFS social worker confirmed that Mother moved from the grandmother's property and into the home of a friend and her teenage son and six-year-old daughter. The social worker reported that there did not appear to be any physical hazards in the friend's four-bedroom home. However, DCFS had not yet received criminal clearances on the friend and her boyfriend and was continuing to

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[1] All further section references are to the Welfare and Institutions Code unless otherwise identified.

[2] The March 27, 2008 minute order for the detention hearing is incorrect in stating the children were detained in shelter care.

investigate Mother's failure to protect A.A. from sexual abuse. For these reasons, DCFS recommended that the children not be released to Mother.

Further investigation revealed that Mother had been abused by Juan A. from the time she was six until she was twelve years of age. The maternal grandmother never did anything about the abuse, despite being aware of it. Mother attempted suicide and often stayed with friends or relatives to avoid being in the same home as her abuser. Mother acknowledged that she had responded to A.A.'s abuse in the same manner as the grandmother had responded to Mother's abuse. Mother had moved her family so close to Juan A. only because she could not afford housing other than living on the grandmother's property. Mother was working as a part-time cashier. She had been employed at odd jobs but depended primarily on child support as income.

On July 1, 2008, the juvenile court held a contested jurisdictional/dispositional hearing. DCFS submitted its jurisdiction/disposition report, which cited the detention report, the police reports, and the witness statements in the jurisdiction/disposition report as evidence supporting the petition. In the report, the social worker indicated that Mother did not appear to understand the seriousness of the risk she placed the children in, which ultimately resulted in the sexual abuse of A.A.

In regard to the children's safety in the home, the social worker wrote that Mother had moved out of the home where the abusers resided. The criminal cases against the uncle and the cousin had been rejected for prosecution, and they had been released prior to the jurisdictional/dispositional hearing. The social worker noted that Mother had enrolled in counseling but that DCFS continued to be concerned about Mother's lack of ability to make the right choices in order to protect her children.

At the hearing, the DCFS social worker also testified that she understood that Mother was residing only temporarily with her friend and Mother did not know if she would be able to continue living there if the children were returned to her. The social worker testified that the criminal background check on the friend revealed the friend had a criminal conviction for manufacturing a dangerous weapon. The social worker

expressed concern that, given that Mother's housing was temporary, the possibility existed that Mother might resume living on the grandmother's property.

Mother testified that she made enough money to afford a home for the children and that she had not been back to the grandmother's home since she moved to her friend's home. She acknowledged that, while the children were living on the grandmother's property, A.A. had been alone with the uncle when he molested her and that the other children had also been alone with him. Mother testified that, after learning of the abuse, she never allowed the children to be alone with the uncle.[3]

The juvenile court admitted into evidence the DCFS reports previously submitted and the sustained petition and declared the children to be dependent children of the court under section 300, subdivisions (b), (d) and (j). After making the jurisdictional ruling, the juvenile court referee asked if there was any reason why they could not proceed to disposition at that time. None of the parties' counsel responded.

After argument by counsel, the juvenile court announced its findings and rulings. The court found by clear and convincing evidence pursuant to section 361 that (1) a substantial danger existed or would exist to the children's physical health, safety, protection, and physical and emotional well-being if they were returned to Mother; (2) there were no reasonable means by which the children's physical health could be protected without removing the children from Mother's physical custody; and (3) reasonable efforts were made to prevent and eliminate the need for the children's removal from Mother's home. The court ordered that the fathers would retain physical custody of their children and the children would be under the supervision of DCFS. The court ordered individual counseling for A.A. For Mother, the court ordered that she attend individual counseling to address sexual abuse for non-perpetrators and child protection, and also that she attend conjoint counseling with A.A. The court ordered Mother to

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[3] This testimony was inconsistent with her statements to the social worker in her interview on May 21, 2008, that, after she learned of the abuse, there might have been times where the uncle and the cousin had access to the children.

submit to a psychological evaluation and follow any recommended treatment plan. As to visitation, the court ordered that Mother could have unmonitored visitation with a child in the father's home in which the child was placed and monitored visitation outside the home. The court gave DCFS discretion to liberalize the visitation.

## DISCUSSION

Mother primarily challenges the sufficiency of the evidence to support the juvenile court's jurisdiction and disposition orders. We review such challenges under the substantial evidence standard (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820), keeping in mind that the primary purpose of dependency proceedings is to serve the best interests of the child. (See *Montenegro v. Diaz* (2001) 26 Cal.4th 249, 255.)

"'In juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact.' [Citation.]" (*In re David H.* (2008) 165 Cal.App.4th 1626, 1633.) Where the evidence so viewed is sufficient as a matter of law, we must affirm the juvenile court's ruling. (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 820.)

### 1. *Jurisdiction*

Mother asserts that, at most, the juvenile court should have ordered that informal voluntary maintenance services be provided under section 301. She claims there was insufficient evidence that, at the time of the jurisdictional/dispositional hearing, the children were at substantial risk of harm, as required to establish dependency jurisdiction

over them under section 300, subdivisions (b), (d) and/or (j).[4] Mother asserts that the evidence did not support the jurisdictional findings required under *In re Rocco M.*, *supra*, 1 Cal.App.4th 814 that, "[w]hile evidence of past conduct may be probative . . . , the question under section 300 is whether circumstances *at the time of the [jurisdictional] hearing* subject the minor to the defined risk of harm. [Citations.][5]" (*Id.* at p. 824.) Mother explains that, at the time of the jurisdictional hearing, the children were no longer subject to the risk of further abuse, in that she had eliminated any risk by moving away from the abusers, and her past poor judgment in placing the children at risk was insufficient evidence to support a finding of substantial risk.

Mother's conclusion is flawed, however, in that it fails to apply the *Rocco M.* criteria to the full range of facts before the court. In *Rocco M.*, for example, there were

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[4] Section 300, subdivisions (b), (d) and (j) provide in pertinent part as follows: "Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court: [¶] . . . [¶] (b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . . No child shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. . . . [¶] . . . [¶] (d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse. [¶] . . . [¶] (j) The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child."

[5] "This rule is also compelled by the language of subdivision (b) itself, which provides in part, 'The [child] shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the [child] from risk of suffering serious physical harm or illness.' (§ 300, subd. (b).)"

no facts showing any reason for the mother to know or suspect the caretaker would abuse the boy, repeated instances of abuse, or any future risk that it would recur. (*In re Rocco M.*, *supra*, 1 Cal.App.4th at pp. 817, 825.) We also note that the *Rocco M.* court expressly declined to determine whether a substantial risk of abuse existed at the time of the jurisdictional hearing, and decided the matter on other grounds. (*Ibid*.)

In the instant case, the record reveals several facts that raise serious concerns about the possible impairment of Mother's judgment with respect to protecting the children from sexual abuse. Mother moved the children to a property that was home to a known sexual abuser, Juan A., who had abused Mother for several years during her childhood. The property was also home to the children's maternal grandmother, who had failed to protect Mother from Juan A.'s abuse. After Mother learned Juan A. and Oscar V. had sexually abused A.A., one of the purported protective measures she took was to have that same grandmother "keep an eye on" the abusers when Mother was not around. Mother did not move the children away from the property but rather continued to reside there. Thus, Mother effectively allowed a continuing risk that the abusers would have physical access to the children and, therefore, that the abuse could recur. Mother did not move away until DCFS detained the children, leaving little reason to believe that she would otherwise have moved at all.

Mother did not report Juan A. and Oscar V. to the police, demand that they leave the property, or confront them about the abuse in any manner. Her reasons for not taking such actions did not relate to protecting the children. Her reasons related to the welfare or benefit of her own mother, Juan A. and Oscar V. (i.e., because Juan A. paid rent for staying in her mother's home and because Oscar V. had nowhere else to go and would refuse to leave). That is, Mother chose a course that protected the man who abused her as a child and her mother who did not protect her from the abuse.

There was also evidence that Mother could not provide adequate housing for the children, in that she could not show that she had a permanent, safe place for them to live with her. Substantial evidence showed that, at the time of the hearing, Mother's housing situation was temporary, in the home of a person with a criminal history and a teenage

son, and would probably no longer be available if the children were returned to reside with her. If the juvenile court did not exercise jurisdiction over the children, there were no mechanisms to assure that Mother would not leave her children for day care with the grandmother on the property where the abusers resided or that Mother would not move back to the property if she was unable to find alternate affordable housing.[6]

Contrary to Mother's contentions, therefore, the juvenile court did not impermissibly rely solely on Mother's past conduct in assessing the risks to the children existing at the time of the jurisdictional hearing. (See *In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 824.) In any event, "a measure of a parent's future potential is undoubtedly revealed in the parent's past behavior" with his or her children, and it "has relevance to [the parent's] continuing and future capacity as a parent." (*In re Laura F.* (1983) 33 Cal.3d 826, 833.) On a more fundamental level, a parent's prior conduct is relevant in determining what action would be in the best interests of the child. (*Guardianship of L.V.* (2006) 136 Cal.App.4th 481, 496.)

We conclude that substantial evidence supports an implied finding by the juvenile court that, without further evaluation of Mother's psychological issues and further evidence that Mother could provide a safe place to live for the children, the children remained at substantial risk of harm. (*In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 820.) Mother asserts that the juvenile court should have, at most, ordered the provision of informal services under section 301. Given the nature of the risk, however, a reasonable

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**6** Mother contends that the juvenile court abused its discretion in failing to require DCFS to provide services designed to ensure the Mother could obtain and maintain adequate housing as part of the disposition order issued July 1, 2008. Subsequent to Mother filing her appellate brief, we took judicial notice of an order issued on October 8, 2008, requiring DCFS to refer Mother to no cost or low cost housing and services. Therefore, Mother's contention has effectively been rendered moot. In any event, however, whether or not such an order had been incorporated in the disposition order has no bearing on our decision in this appeal. The facts before the juvenile court constituted substantial evidence to support a finding that, at the time of the hearing, Mother could not provide a stable, safe living arrangement should the children be returned to her at the close of the hearing.

inference was that it would not be in the best interests of the children to return them at that time to Mother under only informal arrangements. (*Montenegro v. Diaz*, *supra*, 26 Cal.4th at p. 255.)

Accordingly, substantial evidence supports the juvenile court's determination that each of the children met the qualifications in the following subdivisions of section 300: subdivision (b), as a child who "has suffered, or there is a substantial risk that the child will suffer, serious physical harm . . . , as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child;" subdivision (d) as applied to sexual abuse, and also subdivision (j) as a child whose sibling has been abused or neglected under subdivisions (b) or (d), and there is a substantial risk that the child will be abused or neglected in the same manner. Hence, we conclude that the juvenile court properly ordered that the children be declared dependents of the court pursuant to section 300, subdivisions (b), (d) and (j).

**2. *Disposition: Removal***

At the dispositional hearing, DCFS had the burden of proving, by clear and convincing evidence, one of the applicable grounds for removal specified by section 361[7]

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[7] Section 361 provides in pertinent part: "(a) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. . . . [¶] . . . [¶] (c) A dependent child may not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances . . . : [¶] (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody. . . . [¶] . . . [¶] (4) The minor or a sibling of the minor has been sexually abused, or is deemed to be at substantial risk of being sexually abused, by a parent, guardian, or member of his or her household, or other person known to his or her parent, and there are no reasonable means by which the minor can be protected from further sexual abuse or a substantial risk

and that, other than removal, there were no reasonable means of protecting each child. (§ 361, subd. (c); *In re Henry V.* (2004) 119 Cal.App.4th 522, 525; *In re Michael D.* (1996) 51 Cal.App.4th 1074, 1085.) The juvenile court expressed in its minute order that "[b]y clear and convincing evidence pursuant to [section 361, subdivision (c)(1)]: Substantial danger exists to the physical health of minor(s) and/or minor(s) is suffering severe emotional damage, and there is no reasonable means to protect without removal from the parent's or guardian's physical custody." Mother contends that the juvenile court erred in issuing the disposition order removing the children from her custody, in that there was no such "clear and convincing" evidence and that the court failed to make factual findings as required by law. We disagree.

The clear and convincing evidentiary burden "requires a high probability, such that the evidence is so clear as to leave no substantial doubt" (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 695) and must be "'"'sufficiently strong to command the unhesitating assent of every reasonable mind"'" (*In re Jerome D.* (2000) 84 Cal.App.4th 1200, 1205). On appeal from a judgment requiring proof by clear and convincing evidence, however, "'the clear and convincing test disappears . . . [and] the usual rule of conflicting evidence is applied, giving full effect to the respondent's evidence, however slight, and disregarding the appellant's evidence, however strong.'" (*In re Angelique C.* (2003) 113 Cal.App.4th 509, 519.) Hence, our task is to "review the record in the light most favorable to the [juvenile] court's order to determine whether there is substantial evidence from which a reasonable trier of fact could make the necessary findings based on the clear and convincing evidence standard." (*Isayah C.*, *supra*, at p. 694, italics omitted.)

We concluded *ante* that the juvenile court properly found that, under section 300, subdivisions (b), (d) and (j), the children remained at substantial risk of physical harm. The first prong of the section 361, subdivision (c)(1), standard for removal is that "[t]here

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of sexual abuse without removing the minor from his or her parent or guardian, or the minor does not wish to return to his or her parent or guardian."

is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the [child] if the [child] were returned home." The substantial evidence supporting the finding of substantial risk of harm under section 300 also reasonably supports the finding that there would be a substantial danger to the children's "physical health, safety, protection, or physical or emotional well-being" if they returned to Mother's home. (§ 361, subd. (c)(1); *In re Isayah C.*, *supra*, 118 Cal.App.4th at pp. 694-695.)

Mother claims that the finding of substantial danger to the children if they were returned to Mother's custody is improperly based upon speculation as to future events, not on substantial evidence. We disagree. As support for her claim, Mother cites *In re Steve W.* (1990) 217 Cal.App.3d 10, which states that "speculation about the mother's possible future conduct is not . . . sufficient to support . . . removal of the physical custody of the child from the parent." (*Id.* at p. 22.) In *Steve W.*, the trial court's concern was that, given her previous two relationships, the mother would enter into a relationship with yet another man who would abuse her son. The circumstances indicated that the mother would not resume either of the two previous relationships. The reviewing court concluded that the concern was speculative and did not suffice as substantial evidence to support removal. (*Ibid.*) Thus, *Steve W.* is readily distinguishable on the facts from the instant case. Mother chose *not* to sever her close family ties with the abusers even after she discovered the abuse and, at the time of the dispositional hearing, there remained risks that she might fail to assure that the abusers had no access to the children, such as by returning to live on the grandmother's property or occasionally leaving the children at the abusers' residence in the care of the grandmother.

Mother's reliance on *In re Savannah M.* (2005) 131 Cal.App.4th 1387 is also misplaced. The *Savannah M.* court quoted the *Steve W.* discussion of the insufficiency of speculation to support removal. (*Savannah M.*, *supra*, at pp. 1397-1398.) The facts are quite different from those in the instant case. In *Savannah M.*, the family friend that occasionally babysat the parents' twin toddler daughters sexually molested one of them. Unlike the instant case, the parents had no reason to suspect the friend was a sexual

abuser and when the parents discovered the abuse, they immediately reported it to law enforcement and the abuser was arrested shortly thereafter. The child protective agency argued that, given the parents' alcohol use and its possible effect on their judgment, they might allow another person like the family friend to care for their daughters in the future. (*Id*. at p. 1397.) The reviewing court concluded that the argument was based on "mere speculation," not on substantial evidence of risk of future harm, and reversed the orders for dependency jurisdiction under section 300, subdivision (b), and for removal from the parents' custody. (*Id*. at pp. 1393, 1395-1397, 1399.)

DCFS was required to prove not only a substantial risk of harm to each child, but also that "there are no reasonable means by which the [child's] physical health can be protected without removing the [child] from the [child's] parent's or guardian's physical custody." (§ 361, subd. (c)(1).) Mother claims DCFS did not present sufficient evidence to establish that there were no such reasonable means. We disagree.

Under principles of statutory interpretation, the legislative intent is the primary determinant of how the statute is to be applied, and "a literal construction of a statute will not be followed if it is opposed to its legislative intent." (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1214.) As Mother asserts, the bias of section 361, subdivision (c), is toward "family preservation, *not* removal." (*In re Jasmine G.* (2000) 82 Cal.App.4th 282, 290.) Nevertheless, the paramount legislative purpose of dependency proceedings is the protection of the child. (*Jason L.*, *supra*, at pp. 1214-1215.) Although section 361, subdivision (c), represented a legislative "'effort to shift the emphasis of the child dependency laws to maintaining children in their natural parent's homes,'" such action was limited to situations "'where it was safe to do so.'" (*Jasmine G.*, *supra*, at p. 288.)

As previously discussed, we conclude that the juvenile court properly found that substantial risk of harm to the children existed at the time of the hearing. The same substantial evidence that supports our conclusion also qualifies as substantial evidence to support a finding that, at the time of the dispositional hearing, no reasonable means of protecting the children were available if the children were returned to Mother, given the need for further evaluation of Mother's judgment in regard to protecting the children

from sexual abuse and evidence she had a safe home for the children. Accordingly, we conclude that the juvenile court properly found that "no reasonable means" to protect the children from the risk of harm existed without removing them from Mother's custody. (§ 361, subd. (c)(1); *In re Jason L.*, *supra*, 222 Cal.App.3d at pp. 1214-1215.)

Mother is mistaken in her claim that less drastic alternatives existed, in that Mother could have been residing in suitable, affordable housing but for the failure of DCFS to inform her of its availability. That Mother "could have been" in appropriate housing had no bearing on the fact that, at the time of the dispositional hearing, Mother's housing situation raised safety concerns, was temporary, and possibly would no longer be available if the children returned to live with her. The juvenile court properly focused on the best interests, including the safety, of the children at the time of the dispositional hearing, rather than any failure by DCFS. (*In re Jason L.*, *supra*, 222 Cal.App.3d at pp. 1214-1215.)

Mother relies on *In re Yvonne W.* (2008) 165 Cal.App.4th 1394 as authority for her claim that the juvenile court could not properly use Mother's uncertain housing situation as the basis for finding that no reasonable means of protection were available, particularly since DCFS had failed to inform Mother of the availability of acceptable and affordable low-income housing. The *Yvonne W.* court held that the fact that the mother's housing was in a shelter was insufficient to support a substantial risk of detriment finding, particularly in view of the child protective agency's failure to inform the mother that her housing would be a determinative factor in the juvenile court's custody decision. Mother's reliance on *Yvonne W.* is misplaced, in that the opinion does not pertain to a "no reasonable means" determination under section 361, but rather to a "risk of detriment" determination under section 366.22, subdivision (a), with respect to returning a child to the custody of the mother after they had been living away from the mother for some time pursuant to a disposition ordering their removal from her custody. Further, in *Yvonne W.*, the mother's housing was the sole basis for denying her request that her child be returned to her custody. (*Yvonne W.*, *supra*, at pp. 1401-1402.) As previously discussed, we can

reasonably infer from the record that the juvenile court did not base its removal findings solely on Mother's housing situation.

Mother contends that the juvenile court also erred, in that it failed to make the express findings required by subdivision (d) of section 361, which states: "The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home . . . . The court shall state the facts on which the decision to remove the minor is based." (See also Cal. Rules of Court, rule 5.695(a)(7); *In re B. G.* (1974) 11 Cal.3d 679, 699.) Clearly, however, the juvenile court made the requisite findings, both orally in the disposition hearing and in writing in its minute order: Substantial danger existed because Mother failed adequately to protect the children from known risks of sexual abuse and no reasonable means were available to protect the children if they were not removed from Mother's home and custody. Thus, the juvenile court did not err by failing to make the required findings. (*B. G.*, *supra*, at p. 699.)

The remaining issue is whether the court stated the facts on which the decision to remove the children was based as required by the statute, and if the court failed to do so, whether the failure is prejudicial or harmless error. (§ 361, subd. (d); *In re Jason L.*, *supra*, 222 Cal.App.3d at p. 1218.) We found no express statement of the facts on which the juvenile court made its ultimate findings. The error, however, is not cause to reverse the court's removal order. "[C]ases involving a court's obligation to make findings regarding a minor's change of custody or commitment have held the failure to do so will be deemed harmless where 'it is not reasonably probable such finding, if made, would have been in favor of continued parental custody.' [Citations.]." (*Jason L.*, *supra*, at p. 1218.) As we previously concluded, substantial evidence supports the removal order. We conclude that it is not reasonably probable that, if the juvenile court had stated specific facts supporting its ultimate findings, that the facts would have favored returning the children to Mother's physical custody. Therefore, any error in the expression of the findings was harmless. (*Ibid*.)

**3. *Psychological Evaluation***

It is commendable that Mother had begun counseling by the time of the hearing. As the juvenile court's implied finding indicates, however, evaluation was important to making a finding that Mother had successfully overcome the past deficiencies in her judgment. The juvenile court's finding that an Evidence Code section 730[8] psychological evaluation of Mother was needed is supported by the same substantial evidence that supports the juvenile court's finding that the children remained at a substantial risk of harm.

Mother relies on *Laurie S. v. Superior Court* (1994) 26 Cal.App.4th 195 in asserting that the Evidence Code section 730 evaluation order violated Mother's privacy rights. In *Laurie S.*, a mother challenged a court order to undergo a psychological evaluation prior to the jurisdictional hearing for her child. (*Id*. at p. 197.) The court acknowledged the legal requirement to weigh a parent's right of privacy against the need for the psychological evaluation. (*Id*. at pp. 199-200.) The *Laurie S.* court explained that the psychological evaluation is an information-gathering tool to be used only where expert evidence is or may be required on "'a subject that is sufficiently beyond common experience that the opinion of an expert would assist the trier of fact . . . .' [Citation.] Because the matter to be determined at the jurisdictional hearing is whether a child is at substantial risk of harm at the hands of a parent, due to parental acts or inaction, if that assessment can be made within ordinary experience, no expert is necessary." (*Id.* at p. 202, fn. omitted; Evid. Code, §§ 730, 801, subd. (a).) In ruling that the mother was not required to undergo a prejurisdictional psychological examination, the court referred to

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**8** Hereinafter such evaluation is referred to as a "730 evaluation." Evidence Code section 730 provides in pertinent part: "When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required."

the abundance of evidence of the mother's conduct which justified the juvenile court's declaration of jurisdiction over her child. (*Laurie S., supra*, at p. 202.)

Although the ruling may somewhat support Mother's argument that her past conduct was an insufficient basis for jurisdiction or removal findings, another principle expressed by the *Laurie S.* court defeats Mother's claim of violation of her privacy rights. The court stated that "after a finding the child is at risk, and assumption of jurisdiction over the child, . . . a parent's liberty and privacy interests yield to the demonstrated need of child protection. At that stage, where the aim is to reunify parent and child, expert opinion on the cause and extent of mental [impairment] may be required to ascertain which services will eliminate the conditions leading to dependency." (*Laurie S. v. Superior Court*, *supra*, 26 Cal.App.4th at pp. 202-203.) The juvenile court ordered the section 730 evaluation of Mother only after it properly found that the children were at risk and assumed jurisdiction over them. Thus, the section 730 evaluation order did not impermissibly violate Mother's privacy rights.

Mother argues that no disposition order should have been made until after the completion of her section 730 evaluation, quoting the *Laurie S.* court as follows: "Evaluations are generally ordered as part of a reunification plan after the child is declared a dependent. [Citation.] Frequently after a finding of jurisdiction a parent may be ordered to undergo an evaluation to determine if the parent is mentally disabled and if reunification services are likely to prevent continued abuse and neglect. [Citation.]" (*Laurie S. v. Superior Court*, *supra*, 26 Cal.App.4th at p. 201.) Thus, *Laurie S.* speaks to when "[e]valuations are generally ordered," but is not authority that psychological evaluations must be made prior to the dispositional hearing. Regardless of when "[e]valuations are generally ordered," as we previously concluded, the juvenile court properly found that, under the facts in the instant case, the substantial risk to the children of returning them immediately to Mother's custody would not be in their best interests. (*Montenegro v. Diaz*, *supra*, 26 Cal.4th at p. 255; *In re Neil D.* (2007) 155 Cal.App.4th 219, 225.) The juvenile court did not err in making the order after its dispositional determination.

**4. *Monitored Visitation***

Mother contends that the juvenile court abused its discretion in requiring that her visits with each child outside the home of the father must be monitored. As Mother asserts, we review visitation orders for abuse of discretion and may not disturb the juvenile court's orders unless an abuse of discretion is clearly established. (*Montenegro v. Diaz*, *supra*, 26 Cal.4th at p. 255.) A juvenile court has broad discretion to fashion dispositional orders based upon the court's determination of "'what would best serve and protect the child's interest.'" (*In re Neil D.*, *supra*, 155 Cal.App.4th at p. 225.) When defining the parent's rights in a visitation order, a juvenile court "balance[es] . . . the interests of the parent in visitation with the best interests of the child . . . in light of the particular circumstances of the case before it." (*In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757.) In no circumstances, however, shall a visitation order jeopardize the safety of the child. (§ 362.1, subd. (a)(1)(B); *Neil D.*, *supra*, at p. 225.)

Requiring Mother's visits at a location other than the father's home to be monitored is consistent with the juvenile court's finding that there was risk to each child of substantial danger if the child were returned to Mother's custody at the time of the dispositional hearing. The finding was based on several factors, including but not limited to, Mother's poor judgment with respect to protecting the children from the risk of sexual abuse and the risk that Mother would again make the children accessible by the abusers by moving back to the grandmother's property or leaving the children for day care with the grandmother in the home where the abusers resided.

Given that the court properly found that the children would be at risk of substantial danger if returned to live with Mother, it follows that the risk would exist if the child were released to Mother's unsupervised care for a few hours. Thus, without the monitoring requirement for outside visits, the children's safety would likewise be jeopardized, a result which is not permitted by applicable law. (See § 361.2, subd. (a)(1)(B); *In re Neil D.*, *supra*, 155 Cal.App.4th at p. 225.) Accordingly, we conclude that the juvenile court did not abuse its discretion by imposing the monitoring requirement for outside visits.

## DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED

JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.